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UNITED STATES DEPARTMENT OF
COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
WASHINGTON, D.C. 20231

Lynn J. Alstadt
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One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, PA 15219-1410

In re Application of
John D. Rupel et al.
Application No. 08/979,438
Filed: November 26, 1997
Attorney Docket No.: 970552
For: LIGHT CONTROL WINDOW
COVERING AND METHOD
OF MAKING SAME

:
:
: DECISION ON PETITION
: TO WITHDRAW THE
: HOLDING OF ABANDONMENT
:
:

This is in response to applicant's petition filed in the Patent and Trademark office on May 3, 1999, requesting that a copy the Election serve to replace the lost copy of the correspondence allegedly filed on October 19, 1998.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.8."

Telephone inquires relative to this decision should be directed to Special Programs Examiner Steven Meyers at (703) 308-3868.

A review of the file record indicates that the application was held abandoned for failure to provide a proper response to the office letter of September 21, 1998, within the shortened statutory period of one month set thereon.

Applicant's petition includes a copy of a response, which includes a Certificate of mailing date of October 19, 1998. Under 37 CFR 1.8(b) applicant is required to submit a statement which attests to the personal knowledge, basis or to the satisfaction of the Commissioner to the previously timely submitted response.

Applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

I. Unavoidable Delay.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: **(1)** the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; **(2)** the petition fee required by 37 CFR 1.17(l); and **(3)** an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

II. Unintentional Delay.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: **(1)** the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; **(2)** the petition fee required by 37 CFR 1.17(m); and **(3)** a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The small entity petition fee required by law for filing a petition under the unavoidable standard is \$55. The fee for a petition under the unintentional standard is \$605.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive.

The required items should be promptly submitted under a cover letter entitled "Petition to Revive".

Further correspondence with respect to a petition to revive should be addressed as follows:

By mail: Commissioner of Patents and Trademarks
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By Hand: Crystal Plaza 4, Suite 3C23
2201 South Clark Place
Arlington, VA

Telephone inquiries should be directed to the Office of Petitions Staff at (703) 305-9282.



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